

ESTTA Tracking number: **ESTTA137288**Filing date: **04/25/2007**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Durance
Granted to Date of previous extension	04/29/2007
Address	ZA Quartier Dagasse Grignan, F-26230 FRANCE

Attorney information	Cathy E. Shore-Sirotn Lackebach Siegel LLP One Chase Road Lackebach Siegel Building Scarsdale, NY 10583 UNITED STATES cshore@LSLLP.com, nsaraco@LSLLP.com, tmefs@LSLLP.com Phone:914-723-4300
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Applicant Information

Application No	78842488	Publication date	10/31/2006
Opposition Filing Date	04/25/2007	Opposition Period Ends	04/29/2007
Applicant	Apex Energetics 16592 Hale Avenue Irvine, CA 92606 UNITED STATES		

Goods/Services Affected by Opposition

Class 003. All goods and services in the class are opposed, namely: House mark for non-medicated sun care preparations, sunscreen cream, sun block, sun block preparation, sun creams and sun care lotions, after-sun creams and lotion, for use on various parts of the body
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Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3117431	Application Date	02/17/2005
Registration Date	07/18/2006	Foreign Priority	NONE

		Date	
Word Mark	DURANCE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: SOAPS, PERFUMERY, COSMETICS, ESSENTIAL OILS FOR PERSONAL USE; BODY OILS FOR COSMETIC USE, HAIR LOTIONS, BODY LOTIONS FOR COSMETIC USE, SHOWER GELS AND BALMS, SHAVING CREAMS, COSMETIC GELS AND BALMS FOR THE BODY, PERFUME EXTRACTS, AIR FRESHENERS, INCENSE, INCENSE STICKS, INCENSE CONES, SCENT SACHETS, SCENTED WATER FOR COSMETIC PURPOSES, SHAMPOOS, WASHING POWDERS, WASHING-UP LIQUIDS, SOFTENERS FOR TEXTILES, LINEN WATERS, NAMELY, LIQUIDS USED FOR PERFUMING LINEN, HOUSEHOLD CLEANING PREPARATIONS</p> <p>Class 004. First use: Scented candles</p> <p>Class 021. First use: Perfume burners, incense holders</p>		

Attachments	79017918#TMSN.jpeg (1 page)(bytes) Notice of Opposition.pdf (7 pages)(467326 bytes)
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Signature	/cathy e. shore-sirotin/
Name	Cathy E. Shore-Sirotin
Date	04/25/2007

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK AND TRIAL APPEAL BOARD**

Application Serial No.: 78/842,488
Mark: SKINDURANCE
International Class: 3
Applicant: Apex Energetics
Published: October 31, 2006

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DURANCE,	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No.
	:	
APEX ENERGETICS,	:	
	:	
Applicant.	:	
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NOTICE OF OPPOSITION

Durance (“Opposer”), a Société à Responsabilité Limitée organized and existing under the laws of France, with offices at Za Quartier Dagasse, F-26230 Grignan, France, believes that it will be damaged by the registration of the SKINDURANCE mark shown in Application Serial No. 78/842,488 as applied for by Apex Energetics (“Applicant”).

Applicant’s mark was published for opposition on October 31, 2006. Opposer sought and received two timely extensions of time to oppose, the last one until April 29, 2007. Thus, this Opposition is timely filed, pursuant to 37 C.F.R. § 2.101(c).

As grounds for Opposition, Opposer alleges:

1. Opposer is a Société à Responsabilité Limitée organized and existing under the laws of France.

2. Opposer is in the business of manufacturing, having manufactured, distributing, promoting, advertising, offering for sale, and selling a wide variety of cosmetic, fragrance, and hair and body care products, including, without limitation, soaps, perfumery, cosmetics, essential oils for personal use; body oils for cosmetic use, hair lotions, body lotions for cosmetic use, shower gels and balms, shaving creams, cosmetic gels and balms for the body, perfume extracts, air fresheners, incense, incense sticks, incense cones, scent sachets, scented water for cosmetic purposes, shampoos, washing powders, washing-up liquids, softeners for textiles, linen waters, namely, liquids used for perfuming linen, household cleaning preparations, scented candles, perfume burners, and incense holders (“Opposer’s Goods”).
3. In connection with Opposer’s Goods, Opposer is the owner of the DURANCE trademark (“Opposer’s Mark”).
4. Opposer, either directly or indirectly through licensees and/or distributors, has used Opposer’s Mark openly, notoriously and continuously in interstate commerce in connection with Opposer’s Goods since at least as early as 2002, long prior to Applicant’s date of application or any claimed use by Applicant of the purported mark SKINDURANCE.
5. In connection with Opposer’s Mark, Opposer is the owner of United States Trademark Registration No. 3,117,431 (“Opposer’s Registration”), registered on July 18, 2006, for “soaps, perfumery, cosmetics, essential oils for personal use;

body oils for cosmetic use, hair lotions, body lotions for cosmetic use, shower gels and balms, shaving creams, cosmetic gels and balms for the body, perfume extracts, air fresheners, incense, incense sticks, incense cones, scent sachets, scented water for cosmetic purposes, shampoos, washing powders, washing-up liquids, softeners for textiles, linen waters, namely, liquids used for perfuming linen, household cleaning preparations” in International Class 3, “scented candles” in International Class 4, and “perfume burners and incense holders” in International Class 21.

6. Opposer’s Registration is valid and subsisting.
7. Opposer’s application for registration of Opposer’s Mark was received by the U.S. Patent and Trademark Office (“PTO”) and assigned a filing date of February 17, 2005.
8. Opposer’s application for registration of Opposer’s Mark was filed under Section 66(a) of the Trademark Act, based on International Registration Number 798,250, which was registered on November 20, 2002.
9. Opposer’s application was filed prior to Applicant’s application at issue.
10. Opposer has prior and superior rights to Applicant based both on its earlier filing date and on prior use.
11. Throughout the years, Opposer has expended money, time and effort in advertising, promoting and popularizing Opposer’s Mark.

12. The trade, industry and public have throughout the years used, associated and attributed usage of Opposer's Mark with Opposer and Opposer alone, so that the trade in general and the purchasing public in particular have come to know and recognize Opposer's Mark, and that Opposer's Goods originate from and belong solely to Opposer.
13. Opposer's Mark is inherently strong, as DURANCE is an arbitrary term when used in conjunction with Opposer's Goods.
14. Opposer's Mark has developed goodwill and a good reputation exclusive to Opposer.
15. Upon information and belief and according to the PTO's records, Applicant is a corporation organized under the laws of the State of California, with an address of 16592 Hale Avenue, Irvine, CA 92606.
16. Upon information and belief and according to the PTO's records, on March 21, 2006, Applicant filed the application at issue for the purported mark SKINDURANCE.
17. Upon information and belief and according to the PTO's records, Applicant's application at issue was filed under Section 1(b), based on an intent-to-use the purported mark.
18. Upon information and belief, Applicant had not used the purported mark SKINDURANCE prior to filing the application at issue for the goods identified in the application.

19. The purported SKINDURANCE trademark applied for in Applicant's application is confusingly and deceptively similar to Opposer's Mark, DURANCE, for which Opposer has prior and superior rights; hence, Applicant is not entitled to adopt, use or seek registration of the purported SKINDURANCE trademark in connection with the goods identified in Applicant's application.
20. The goods identified in Applicant's application are "house mark for non-medicated sun care preparations, sunscreen cream, sun block, sun block preparation, sun creams and sun care lotions, after-sun creams and lotion, for use on various parts of the body," in International Class 3 ("Applicant's Goods").
21. Applicant's Goods are identical, nearly identical, and/or closely related to Opposer's Goods sold under Opposer's Mark.
22. Applicant's Goods are of the type distributed and sold through the same channels of trade as Opposer's Goods, to the same class of purchasers as Opposer's Goods, and, therefore, such goods would reasonably be expected by the trade and purchasing public to emanate from or to be sponsored by the same source.
23. Opposer's Mark DURANCE and Applicant's purported mark SKINDURANCE are nearly identical in appearance, connotation and pronunciation, so that contemporaneous use of the respective marks will create a likelihood of confusion, mistake and/or deception among the trade and consumers.
24. The term "durance," which is the whole of Opposer's Mark DURANCE, is the most dominant portion of Applicant's purported mark SKINDURANCE, as the

remaining component, “skin,” is descriptive of Applicant’s goods, namely, skin care related products.

25. As Applicant’s purported mark SKINDURANCE is intended to be used in conjunction with skin care related products, consumers are likely to be confused and believe that the products in Opposer’s DURANCE product line that are specifically designed to be used on the skin and/or for the purpose of skin care are called SKINDURANCE.
26. If Applicant is allowed to register its purported mark, the contemporaneous registration and/or use by Applicant of SKINDURANCE will dilute Opposer’s rights and will eventually result in a lack of designation or indication or origin, and a loss of distinctiveness and exclusivity in Opposer’s Mark.
27. Consequently, Opposer avers that confusion, mistake, deception, dilution, and blurring in the trade and in the minds of the purchasers as between Opposer’s Mark and Applicant’s purported mark, and as to the origin of their respective goods, will be likely and bound to occur with resulting damage to Opposer, within the meaning of Sections 2(a), 2(d), and 43(c) of the Trademark Act, 15 U.S.C. § 1052 (a), (d) and § 1125(c).
28. Opposer has superior and paramount rights as compared to Applicant, and Opposer has used Opposer’s Mark in commerce continuously and from a time prior to any date claimed by or available to Applicant.

WHEREFORE, Opposer respectfully requests that the Opposition be sustained and the registration of SKINDURANCE to Applicant be refused.

The Commissioner is hereby authorized to charge Opposer's Attorneys' Deposit Account No. 100100 for the requisite opposition filing fee of \$300.00, required by 37 C.F.R. §§ 2.101 and 2.6, and to charge any additional fees which may be required or to credit any overpayments to the same deposit account.

Dated: Westchester, New York
April 25, 2007

Respectfully submitted,

LACKENBACH SIEGEL LLP

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